84-1161

CASE NO. _____

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

LATRELLE CAMPBELL,
PETITIONER,

v.

PIERCE COUNTY, GEORGIA, ET AL.,
RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. Whether an at-will employee of local government, deprived of liberty when fired from that employment on publicized false charges of dishonesty and misconduct, was entitled to a pre-termination hearing?

2. Whether a prompt post-termination hearing before a biased tribunal which was not sufficiently impartial to disavow the false charges but publicly affirmed them was constitutionally adequate where undisputed evidence showed that the stigmatized employee was not guilty of the charge of misappropriation of public funds and where the accusations at the hearing were expanded beyond the scope of the notice given the employee?

3. Whether an at-will employee of local government, deprived of liberty by the denial of a pre-termination hearing

when fired from that employment on false charges of dishonesty and misconduct and by affirmation of the false charges by a biased tribunal in a sham post-termination hearing, was entitled to a federal damages remedy pursuant to 42 U.S.C. § 1983?

PARTIES TO THE PROCEEDING

The parties to the proceeding in the United States Court of Appeals for the Eleventh Circuit, whose judgment is sought to be reviewed, are (1) Latrelle Campbell, Petitioner, and Respondents (2) Pierce County, Georgia, (3) Troy Mattox and (4) Foy Kimbrell, former commissioners of Pierce County, and (5) Larry Thomas, former Clerk of the Board of Commissioners of Pierce County.

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In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

LATRELLE CAMPBELL,

Petitioner,

v.

PIERCE COUNTY, GEORGIA, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

TO: THE HONORABLE CHIEF JUSTICE AND THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petitioner, Latrelle Campbell, prays that a Writ of Certiorari issue to review the Judgment of the Court of Appeals for the Eleventh Circuit entered in the above-entitled cause on September 18, 1984, and the Order denying the Petition

for Rehearing entered on October 24, 1984.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit is published at 741 F.2d 1342 (11th Cir. 1984). A copy is included in the Appendix at pages A-2 through A-19. The opinion of the United States District Court for the Southern District of Georgia is unpublished, but a copy is included in the Appendix at pages A-20 through A-37.

JURISDICTION

The Judgment of the Court of Appeals was entered on September 18, 1984. The Order of that court denying the Petition for Rehearing was entered on October 24, 1984. 28 U.S.C. § 1254(1) confers jurisdiction on the Supreme Court of the

United States to review the judgment in question by writ of certiorari.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Due Process Clause of the Fourteenth Amendment of the United States Constitution and 42 U.S.C. § 1983.

U.S. Const. Amend. XIV, § 1 provides in pertinent part:

> No State...shall deprive any person of life, liberty, or property, without due process of law....

42 U.S.C. § 1983 provides in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an

> action at law, suit in equity or other proper proceeding for redress....

STATEMENT OF THE CASE

Petitioner filed her complaint in the United States District Court for the Southern District of Georgia, basing jurisdiction of that Court on 28 U.S.C. § 1343(3) and alleging the denial of her constitutionally protected right to due process of law in violation of 42 U.S.C. § 1983. The complaint named as defendants Pierce County, two former county commissioners and the clerk of the board of commissioners. Petitioner alleged that the three animate defendants fired her without a hearing on the pretext, inter alia, that she was guilty of misappropriation of county funds, that the false charges were disseminated to news media and the public, that a post-termination hearing was held pursuant to inadequate

notice and was a sham, that the tribunal conducting the post-termination hearing was prejudiced, that the stigmatizing charges damaged her reputation and impaired her employment opportunities, and that this injury was aggravated by affirmation of the false charges at the sham hearing. Respondents filed appropriate responsive pleadings and thereafter filed a motion for summary judgment. On September 30, 1983, the district court granted respondents' motion for summary judgment, and petitioner appealed to the United States Court of Appeals for the Eleventh Circuit. The court of appeals affirmed the judgment of the district court on September 18, 1984, and denied the Petition for Rehearing on October 24, 1984.

The evidence on motion for summary judgment showed that petitioner was employed in the office of the Board of Commissioners of Pierce County until January

5, 1982. On that date a majority of the commissioners voted to dismiss her from employment. The reasons cited were insubordination, disrespect and "misappropriation of some monies on the county employees Hospital premium payments." The personnel action taken against petitioner and the reasons for her dismissal were reported in the minutes of the commissioners' meeting and thus became available to the public. Subsequently, local newspapers and radio stations began a series of reports publicizing her termination and the charges of insubordination and misappropriation of county funds.

On January 8, petitioner received correspondence from respondents specifying reasons for her dismissal, including the charge of "Misappropriation of County funds-insurance premium payments," and on the same date the county attorney sent

petitioner's attorney a letter setting a date for the hearing that petitioner had previously requested.

On January 21, 1982, a hearing was held before the board of commissioners at which the county presented witnesses against petitioner. Petitioner was given the opportunity to cross-examine such witnesses and to present evidence on her own behalf.

Evidence at the post-termination hearing and on motion for summary judgment showed without dispute that the alleged and highly publicized "misappropriation" of funds was the continued payment of group medical premiums for a county employee on leave of absence because of illness, that the payments were specifically authorized by the chairman of the board of commmissioners, who under Georgia law was the county's chief executive officer, and that other members of

the board had been aware of the payments for a number of months during which they made no objection. The evidence further showed that the county had similarly continued premium payments for other employees on leave because of illness and would have authorized a finding that the county had a policy of continuing such payments. In fact, the checks covering the payments were sometimes written by persons other than petitioner.

Conducting the post-termination hearing in an aggressively prosecutorial manner, the county introduced surprise evidence of an entirely different (and false) charge of misappropriation of county funds through the allegedly unauthorized payment of an hourly "tool expense" to another employee and expanded the charges of insubordination and disrespect to the clerk to include petitioner's relationship with previous clerks,

which had been condoned over a nine-year span.

The testimony of county witnesses established that petitioner was an efficient and able employee. Yet, it would be fair to say that there was conflicting evidence of intermittent rude or uncooperative behavior which might have furnished a rational basis for dismissing petitioner because of her personality, but certainly not because of thievery as charged.

At the conclusion of the post-termination hearing, notwithstanding undisputed evidence that petitioner had made the insurance premium payments pursuant to specific instructions and apparent county policy, the board of commissioners affirmed its previous decision without repudiating any of the false charges against petitioner, thereby leaving peti-

tioner branded with the stigma of thievery.

REASONS FOR GRANTING THE WRIT

THE DECISION OF THE COURT OF APPEALS IS IN CONFLICT WITH DECISIONS OF THE SUPREME COURT REQUIRING A PRE-TERMINATION HEARING AND WITH DECISIONS OF OTHER FEDERAL COURTS OF APPEALS.

The court of appeals held in its decision of September 18, 1984, that a county employee, deprived of liberty by the publication of false charges of dishonesty and misconduct in connection with discharge from that employment, is not entitled to a pre-termination hearing. The court of appeals quoted In Re Selcraig, 705 F.2d 789, 796 (5th Cir. 1983):

> The hearing...is not a prerequisite to publication [of adverse material] and the state is not obliged to tender one. The state need only make known to the stigmatized employee that he may have an opportunity to clear his name upon request.

The court of appeals also held, in footnote 2 of its opinion, that the three-factor balancing test of Mathews v. Eldridge, 424 U.S. 319 (1976), applied to deprivations of property but not to deprivations of liberty. Thus, the court of appeals held that a pre-termination hearing is never required where "only liberty interests" are involved.

The decisions of the eleventh circuit in this case and of the fifth circuit in Selcraig, supra, that the right to a hearing is not triggered until the stigmatized employee requests a hearing after the publication of false charges, are in conflict with language of the Supreme Court in Board of Regents v. Roth, 408 U.S. 564 (1972). In Roth, the Supreme Court wrote, at 408 U.S. 569-570, as follows:

> When protected interests are implicated, the right to some kind of prior

> hearing is paramount. [Emphasis added.]

Discussing Roth's rights in the event he had been stigmatized, the Supreme Court went on to say, at 408 U.S. 574:

> The Court has held, for example, that a State...cannot foreclose a range of opportunities...in a manner that denies the right to a full prior hearing. [Emphasis added.]

The language of the Supreme Court in Roth, supra, is supported by the opinion of Mr. Justice Brennan in Codd v. Velger, 429 U.S. 624 (1977), in which he wrote at page 629:

> Under Board of Regents v. Roth... respondent therefore was entitled to a timely pretermination hearing. The Court today reaffirms Roth....

The language of the Supreme Court in Roth, supra, is also supported by the opinion of the Supreme Court in Owen v. City of Independence, 445 U.S. 622, 632 (1980), wherein the Court, dealing with a liberty interest, described the action of

the court of appeals in footnote 12, without disapproval, as follows:

> The court explained that petitioner's termination without a hearing must be considered a nullity, and that ordinarily he ought to remain on the payroll and receive wages until a hearing is held and a proper determination on his retention is made.

The applicable principle was eloquently stated in Wisconsin v. Constantineau, 400 U.S. 433 (1971), wherein the Court wrote at page 437:

> [W]here the State attaches "a badge of infamy" to the citizen, due process comes into play. [Citation omitted.] "[T]he right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society." [Emphasis added, citation omitted.]

The decisions of the eleventh circuit in this case and of the fifth circuit in Selcraig, supra, are also in conflict with those of other federal courts of appeals. In Vanelli v. Reynolds School Dist. No. 7, 667 F.2d 773 (9th Cir.

1982), the Court of Appeals for the Ninth Circuit applied the balancing test (footnote 8) of Mathews v. Eldridge, 424 U.S. 319, supra, and held that a pre-termination hearing was required, stating at page 778 as follows:

> There is a strong presumption that a public employee is entitled to some form of notice and opportunity to be heard before being deprived of a property or liberty interest. [Emphasis added, citations omitted.]

In Rodriguez de Quinonez v. Perez, 596 F.2d 486, 490 (1st Cir. 1979), the Court of Appeals for the First Circuit applied the balancing test in determining that a pre-termination hearing was not required. In Owen v. City of Independence, 560 F.2d 925 (8th Cir. 1977), rev'd other grounds 445 U.S. 622, the Court of Appeals for the Eighth Circuit held that the employee's termination without a hearing was a nullity.

In the case sub judice publication of the stigmatizing charges was in progress concurrently with petitioner's termination, as apparently, minutes of the meeting were being taken for the public record.[1] There were no exigent circumstances compelling termination prior to a hearing, as the alleged "misappropriation" had ceased two months prior to the termination, the county's chief witness testified at the hearing that petitioner was an efficient and able employee, and petitioner's personality had been tolerated by other county officers and employees for a period of nine years.

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1. The suggestion of the court of appeals that the publication of the commissioners' meeting was "legally sanctioned" by Georgia statutory law, in accordance with a ruling of the district court, is incorrect. The applicable Georgia statutory provisions, which exclude personnel action from publication requirements and from the open-meetings law, are included in the Appendix at pages A-42 through A-43.

THE DECISION OF THE COURT OF APPEALS IS IN CONFLICT WITH DECISIONS OF THE SUPREME COURT REQUIRING A HEARING AT A MEANINGFUL TIME AND IN A MEANINGFUL MANNER BEFORE A FAIR TRIBUNAL.

The district court wrote in its order: "[P]laintiff complains that the hearing was inadequate because the personal animosity of the two defendant Commissioners prevented them from disavowing the charges....But this ignores the "name-clearing" purpose of the hearing. If plaintiff's contention was correct, the hearing afforded her the opportunity to expose such animosity. Due process requires no more." Thus, the district court held that due process in the protection of a liberty interest in this context permits a hearing before a biased, even inimical, tribunal. In its opinion of September 18, 1984, the court of appeals wrote: "[W]e agree with the

district court that the nature of the hearing resolves this question."

To the contrary, the Supreme Court has written, with regard to protected interests, in Boddie v. Connecticut, 401 U.S. 371, 378-379 (1970), as follows:

> What the Constitution does require is "an opportunity...granted at a meaningful time and in a meaningful manner...for [a] hearing appropriate to the nature of the case....[Emphasis added.]

The Supreme Court has also written, in Withrow v. Larkin, 421 U.S. 35, 46-47 (1975):

> [A] fair tribunal is a basic requirement of due process....[A] biased decisionmaker [is] constitutionally unacceptable....

Our constitution simply does not condone proceedings typical of the Court of Star Chamber. The manner of a "name-clearing" hearing cannot possibly be meaningful if the judges conducting the hearing are not sufficiently impartial to disavow the stigmatizing charges if ap-

propriate, but are prepared only to affirm their own prior actions. Petitioner respectfully contends that the holding of the court of appeals, which does not require a repudiation of charges fairly shown to be false, would make a "name-clearing" hearing a futile and empty gesture for a fired public employee and would permit public officials to repeat and aggravate the original deprivation of liberty by sham hearing without constitutional hindrance.

THE DECISION OF THE COURT OF APPEALS IS IN CONFLICT WITH DECISIONS OF THE SUPREME COURT PERMITTING A DAMAGES REMEDY FOR VIOLATONS OF PROTECTED RIGHTS.

The holding of the court of appeals that petitioner was not entitled to a damages remedy was predicated on its holdings that a pre-termination hearing was not required and that the post-termination hearing was not constitutionally

inadequate. The latter holding gave no consideration to petitioner's claim that the post-termination hearing was a sham, as in Simineo v. School Dist. No. 16, 594 F.2d 1353, 1356-1357 (10th Cir. 1979), or that it might have been ineffectual to erase the stigma created by the false charges, as recognized in Rodriguez de Quinonez v. Perez, 596 F.2d 486, supra at 491. If a pre-termination hearing was required under the circumstances or if the post-termination hearing was constitutionally inadequate or ineffectual to erase the stigma, a damages remedy was clearly available under the holdings of the Supreme Court in Carey v. Piphus, 435 U.S. 247 (1978), and Owen v. City of Independence, 445 U.S. 622, supra. As the Court wrote in Owen at page 651:

> How "uniquely amiss" it would be if the government itself - "the social organ to which all in our society look for the promotion of liberty, justice, fair and equal treatment, and the set-

> ting of worthy norms and goals for social conduct" - were permitted to disavow liability for the injury it has begotten....

CONCLUSION

The Supreme Court held in Codd v. Velger, 429 U.S. 624, 627, supra: "[T]he remedy mandated by the Due Process Clause of the Fourteenth Amendment is 'an opportunity to refute the [stigmatizing] charge.'" That language does not mean literally that a pre-termination hearing is never required, as it has been interpreted in the eleventh circuit and in the fifth circuit, nor does it mean that a hearing before an inimical tribunal comports with due process because it affords "the opportunity to expose such animosity."

The courts have been diligent to protect a public employee's property interest in his employment, even where non-stigmatizing reasons prompt termination.

In such a case, the employee has little to lose other than his present employment. In contrast, the courts have found it conceptually much more difficult to protect the liberty interest of a public employee facing termination on stigmatizing charges. In the latter case, the employee suffers not only the loss of his job, but also the loss of good name, of solace of friends, of a sense of place in the community, and of future employment opportunities - a loss far more devastating than the loss of a simple property interest. Like petitioner, untold numbers of other subordinate public employees across this land find themselves in that same humiliating position every year.

Media vigilance toward happenings in government today is such that in most cases when a public employee is terminated on stigmatizing grounds publication can be prevented only by active conceal-

ment on the part of the officials involved in the termination. A liberty interest is therefore implicated and threatened at the point when termination on those grounds is first considered.

To ensure the efficacy of the Due Process Clause and fairness to the threatened employee, the hearing required to protect liberty in this context should be a timely pre-termination hearing - subject to the balancing test - "to prevent a substantively unfair or mistaken deprivation" of that interest. To suggest that when a liberty interest, rather than a property interest, is implicated the hearing required by the very same Due Process Clause should have some other or lesser purpose, is paradoxical. To suggest that an inimical tribunal in a post-termination hearing is acceptable, is unthinkable.

The plight of petitioner and of other public employees similarly situated now and in years to come and the plain conflict of the decision of the court of appeals with decisions of the Supreme Court and of other federal courts of appeals combine to present questions of sufficient substance and importance to warrant review by the Supreme Court. Upon the foregoing, it is respectfully submitted that the petition for a writ of certiorari should be granted.

This the 15th day of January, 1985.

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Latrelle CAMPBELL,
Plaintiff-Appellant,

v.

PIERCE COUNTY, GEORGIA, By and Through the BOARD OF COMMISSIONERS OF PIERCE COUNTY, Troy Mattox, Foy Kimbrell, and Larry Thomas,
Defendants-Appellees.

No. 83-8731

United States Court of Appeals, Eleventh Circuit

Sept. 18, 1984

Former county employee brought civil rights action alleging deprivations of constitutional rights arising from termination of her employment. The United States District Court for the Southern District of Georgia, Anthony A. Alaimo, Chief Judge, granted county's motion for summary judgment, and employee appealed.

The Court of Appeals, Johnson, Circuit Judge, held that county, which afforded discharged at-will employee of board of commissioners a posttermination hearing before a tribunal composed of board members, afforded employee a constitutionally adequate opportunity to clear her name only 14 days after her dismissal.

Affirmed.

1. Constitutional Law

As an at-will employee, county employee possessed no property interest in her continued employment.

2. Civil Rights

While damage to reputation, standing alone, does not provide basis for an action under Section 1983, when such damage is sustained in connection with a termination of employment, it may give rise to a claim for deprivation of liber-

ty actionable under Section 1983. 42 U.S.C.A. § 1983.

3. Constitutional Law

County, which afforded discharged at-will employee of board of commissioners a posttermination hearing before a tribunal composed of board members, afforded employee a constitutionally adequate opportunity to clear her name only 14 days after her dismissal and therefore she was not entitled to damages under Section 1983. U.S.C.A. Const.Amend. 14; 42 U.S.C.A. § 1983.

Appeal from the United States District Court for the Southern District of Georgia.

Before KRAVITCH and JOHNSON, Circuit Judges, and ALLGOOD*, District Judge.

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*Honorable Clarence W. Allgood, U.S. District Judge for the Northern District of Alabama, sitting by designation.

JOHNSON, Circuit Judge:

This is an action brought under 28 U.S.C.A. § 1343(3) and 42 U.S.C.A. § 1983 for alleged deprivations of constitutional rights arising from termination of public employment. The former employee, Latrelle Campbell, appeals from an order of the United States District Court for the Southern District of Georgia granting the county's motion for summary judgment. Because there is no material issue of fact as to whether the appellant was given the constitutionally required opportunity to clear her name in connection with her termination, we affirm.

I. Factual Background

Appellant Campbell was employed as Assistant Clerk to the Board of Commissioners of Pierce County until January 5, 1982. On that date, a meeting of the Board of Commissioners voted to dismiss

her from employment. At the conclusion of the session, appellant received both oral and written notification of the decision and the reasons which led to it. The reasons cited were insubordination, disrespect and misappropriation of county funds. The personnel action taken against appellant Campbell and the reasons for her dismissal were reported in the minutes of the Commissioner's meeting and thus became available to the public. Subsequently, local newspapers and radio stations began a series of reports publicizing her termination and the charges of insubordination and mishandling of county funds.

On the 8th of January, appellant received correspondence from the appellees, reiterating the reasons for her dismissal and setting a date for the hearing that appellant had previously requested. On

January 21, 1982, a hearing was held at which the county presented witnesses who testified as to the circumstances which led to appellant's dismissal. Appellant was afforded the opportunity to cross-examine such witnesses and to present evidence on her behalf. After hearing all of the relevant testimony, the Board of Commissioners affirmed its previous decision.

On January 3, 1983, appellant filed her complaint under 42 U.S.C.A. § 1983, alleging that her termination and the subsequent news coverage of the reasons for it had damaged her reputation and impaired her ability to secure future employment. She claimed that this damage, which allegedly deprived her of liberty without due process, was not cured by the subsequent hearing, which she claimed was inadequate and constitutionally

infirm. She sought relief, in the form of damages, from the county. On September 30, 1983, the district court granted the county's motion for summary judgment, holding that the January 21, 1982, hearing provided appellant with the "fair opportunity to clear her name" which was constitutionally required in cases involving reputational or liberty interests. From this order Campbell appeals.

Appellant claims that the district court erred in holding as a matter of law that she was not entitled to a pre-termination hearing, that the post-termination hearing provided was not constitutionally inadequate, and that she was not entitled to a damages remedy. In evaluating appellant's claims, we will consider first the nature of the deprivation alleged, and the appellant's contentions concerning the adequacy of the process provided.

II. Nature of the Deprivation

[1,2] One issue with respect to which the parties agree in this case is the nature of the deprivation claimed. Appellant admits that, as an at-will employee, she possessed no property interest in her continued employment with Pierce County. The harm suffered by the appellant was damage to reputation caused by the adverse publicity arising from the legally-sanctioned publication of the Commissioner's meeting at which she was dismissed. While damage to reputation, standing alone, does not provide the basis for an action under Section 1983, Paul v. Davis, 424 U.S. 693, 96 S.Ct. 1155, 47 L.Ed.2d 405 (1976), when such damage is sustained in connection with a termination of employment, as occurred in the instant case, it may give rise to a claim for deprivation of liberty actionable under

Section 1983. Codd v. Velger, 429 U.S. 624, 97 S.Ct. 882, 51 L.Ed.2d 92 (1977); Paul v. Davis, supra; Roth v. Board of Regents, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972); In Re Selcraig, 705 F.2d 789 (5th Cir.1983); White v. Thomas, 660 F.2d 680 (5th Cir. 1981).

Yet while appellant concedes that she possesses only a liberty interest in connection with her termination, she demands a type of process which is virtually indistinguishable from that afforded claimants with a property interest in their employment. The district court held, and we agree, that these two types of interests require distinct procedural responses.

Where a property interest is at stake, courts have usually held that a pre-deprivation hearing may be required.[1] Mathews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893,

47 L.Ed.2d 18 (1976); Fuentes v. Shevin, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972); Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970); Glenn v. Newman, 614 F.2d 467 (5th Cir.1980). The purpose of such a hearing is to prevent a substantively unfair or mistaken deprivation of the claimant's interest. Carey v. Piphus, 435 U.S. 247, 98 S.Ct. 1042, 55 L.Ed.2d 252 (1978); Fuentes v. Shevin, supra.

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1. Not all of the courts which have adopted this position have actually ordered the pre-deprivation hearings sought in the cases before them. Mathews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), which articulated the balancing test relied on by appellant, held that a pre-deprivation hearing was not required before an individual could be deprived of social security disability payments. Moreover, even in cases where courts have held that a pre-deprivation hearing was constitutionally required, they have sometimes held a post-deprivation hearing sufficient to cure the violation. Glenn v. Newman, 614 F.2d 467 (5th Cir.1980).

In cases where a liberty interest arising from reputational damage is implicated, the courts have followed a different procedural course. The hearings granted in such cases serve not to avert the unjustified denial of a specific benefit, but to allow the aggrieved party to "clear his name." Codd v. Velger, 429 U.S. 624, 627, 97 S.Ct. 882, 884, 51 L.Ed.2d 92 (1977). The procedural requisites of this type of hearing are also different. Because it is provided simply to cleanse the reputation of the claimant, the hearing need not take place prior to his termination or to the publication of related information adverse to his interests. The Fifth Circuit stressed this point in In Re Selcraig, a case involving a liberty interest similar to that at stake in this case:

> The hearing...is not a prerequisite to publication [of adverse material] and the state is not obliged to tender one. The state need only make known to the stigmatized employee that he may have an opportunity to clear his name upon request. It need not initiate the hearing process of its own accord.

705 F.2d 789, 796 (5th Cir.1983). See also Rodriquez de Quinonez v. Perez, 596 F.2d 486 (1st Cir.1979) (pre-termination hearing not required but post-termination hearing necessary in case involving liberty interest); White v. Thomas, supra, (post-termination hearing proper remedy for employee deprived of liberty interest during termination). While the features of such a hearing itself have been prescribed with substantial flexibility, courts have required that the claimant have notice of the charges which have been raised against him, and an opportunity to refute, by cross-examination or independent evidence, the allegations which gave rise to the reputational

injury. White v. Thomas, supra; Endicott v. Huddleston, 644 F.2d 1208 (7th Cir. 1980).

III. Adequacy of the Process Provided

[3] Against the backdrop of this precedent, it is clear that the district court was wholly justified in finding that Pierce County had afforded appellant Campbell the process necessary to redress any injury to her liberty interest.

A. Timing of the Hearing

The identification of appellant's claim as the deprivation of a liberty interest is dispositive of appellant's contention that she was entitled to a pre-termination hearing. The only process required in this case is the kind of "name-clearing" hearing described in Codd v. Velger and In Re Selcraig, supra; and such a hearing is not required to be held

prior to termination.[2] Indeed, as the court in Selcraig observed, the factual predicate for a claim of reputational damage is the publication of adverse material which, in this case, did not occur until after appellant's termination. In Re Selcraig, 705 F.2d 789, 797 (5th Cir.1983).

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2. Nothing in appellant's argument or sources establishes the contrary. The majority of the cases she cites--in particular Mathews v. Eldridge, supra, from which she derives the balancing test she claims is controlling--concern deprivations of a property, rather than a liberty, interest. Of the cases which implicate a liberty interest, one, Rodriguez de Quinonez v. Perez, supra, states unequivocally that only a post-termination hearing is required, and the other, which involved both liberty and property interests, draws less of a distinction between the two interests and instructs the parties that "the liberty interest could easily have been protected" in the pre-termination hearing required for the property interest. Vanelli v. Reynolds School Dist. No. 7, 667 F.2d 773, 778 (9th Cir.1982).

B. Procedural Features of the Hearing

In cases involving only liberty interests, the courts have required only that the claimant be accorded notice of the charges against him and an opportunity "to support his allegations by argument however brief, and, if need be, by proof, however informal." Memphis Light, Gas & Water Div. v. Craft, 436 U.S. 1, 16 n. 17, 98 S.Ct. 1554, 1564 n. 17, 56 L.Ed.2d 30 (1978); White v. Thomas, supra; Endicott v. Huddleston, supra. In light of such flexibility, the district court was correct to reject appellant's claim that the hearing provided by appellees was constitutionally inadequate. With respect to adequacy of notice, appellant had the full period between her termination and the January 21, 1982, hearing to familiarize herself with the charges that had been made against her; moreover, the

record of the hearing shows that she had, and availed herself of, opportunity to hear and cross-examine all adverse witnesses and to attempt to rebut their claims of insubordination and mishandling of funds. As to appellant's charge that the composition of the tribunal rendered impartiality impossible, we agree with the district court that the nature of the hearing resolves this question. Because the purpose of the hearing was not to re-evaluate appellant's termination but to allow her to clear her name, the fact that the tribunal was composed of members of the Board of Commissioners did not impair its ability to preside in an acceptably impartial manner.[3]

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3. Vanelli v. Reynolds School Dist. No. 7, supra, one of appellant's main authorities, goes even further on the question of impartiality. Citing decisions in a variety of contexts in which the prior participation of employers in termination decisions did not disqualify them from

C. Damages

In her claim for damages, appellant cites a number of cases in which courts have awarded damages in connection with the deprivation of a liberty interest. Yet these cases, in which the claimant was denied any procedural opportunity to clear his name, Owen v. City of Independence, 445 U.S. 622, 100 S.Ct. 1398, 63 L.Ed.2d 673 (1980); White v. Thomas, supra; Rodriguez de Quinonez v. Perez, supra, or in which a subtantial amount of time elapsed between the claimant's termination and the "name-clearing" hearing, Endicott v. Huddleston, supra (hearing not granted until almost three years after termination), are wholly distinguish-

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fn. 3. cont. participating in subsequent hearings, the court held that the participation of board members is "in practical effect no different from a judge or administrator rehearing his own decision after reversal and remand." 667 F.2d at 779 n. 10.

able from the instant case.[4] Because appellant was provided with a constitutionally adequate opportunity to clear her name only 14 days after her dismissal, she cannot prevail on her claim for damages under Section 1983.

AFFIRMED

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4. At least one court has expressed doubt as to whether the denial of due process in connection with a reputational injury could provide an independent basis for damages under Section 1983. Vanelli v. Reynolds School Dist. No. 7, 667 F.2d 773, 781 (9th Cir.1982) (doubting "there will be much difference" between the "intensity and degree of suffering when a procedural deprivation impairs both a liberty and propery interest as when it impairs only a property interest"). This reservation is in accord with the holding in Carey v. Piphus, supra, that damages arising from mental and emotional distress cannot be assumed but must be documented by proof.

Filed
September 30, 1983

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

LATRELLE CAMPBELL, CIVIL ACTION
Plaintiff

v. No. 583-001

PIERCE COUNTY, GEORGIA (By and Through the Board of Commissioners of Pierce County), **TROY MATTOX, FOY KIMBRELL and LARRY THOMAS,**
Defendants

ORDER

This action is brought under 28 U.S.C. § 1343(3) and 42 U.S.C. § 1983 by a former Pierce County employee seeking to redress alleged deprivations of constitutional rights arising out of her termination from County employment. Presently pending before the Court is defendants' motion for summary judgment.

FACTS

The plaintiff, Latrelle Campbell, was employed as Assistant Clerk to the Board of Commissioners of Pierce County until her dismissal on January 5, 1982. Defendant Larry Thomas was then serving as the County Clerk to the Board of Commissioners, a position of authority over the Assistant Clerk. At the January 5, 1982, meeting of the Board of Commissioners, Thomas requested that the Commissioners dismiss the plaintiff from her employment. The request was taken up by two of the three Commissioners at an Executive Session following the regular meeting. There, the two defendants, Commissioners Mattox and Troy, approved the firing of plaintiff.

At the conclusion of the Executive Session, plaintiff was brought into the Commissioners' office and informed of the decision and the reasons which led to it.

The reasons, as discussed at the Executive Session, were insubordination, disrespect and mishandling of county funds. The personnel action taken against plaintiff, along with the above reasons, were reported in the minutes of the Commissioners' meeting, thus becoming available to the public. Subsequently, the local newspapers and radio stations began a series of news reports which publicized plaintiff's termination and the charges of insubordination and mishandling of county funds.

Between the 7th and 10th of January, plaintiff or her attorney received correspondence from the defendants reiterating the reasons for her dismissal and setting a date for the hearing that had been previously requested by plaintiff. On January 21, 1982, a hearing was held at which the County presented witnesses who testified as to the circumstances which

led to plaintiff's dismissal. Plaintiff was afforded the opportunity to cross-examine such witnesses and to present evidence on her own behalf.

DISCUSSION

In her complaint, as further outlined in her contentions recited in a pretrial order, plaintiff contends that her termination constituted an unconstitutional infringement of her liberty, in violation of the Fourteenth Amendment's Due Process Clause, because the resulting stigma to her reputation has foreclosed future employment opportunities and caused her emotional distress. Plaintiff is not claiming any property interest deprivation because her position with the County was terminable at will.

The law is now settled as to the existence of a protected liberty interest which is implicated when an employee is

discharged in a manner that creates a defamatory impression about him and thereby impairs his future ability to secure gainful employment. Paul v. Davis, 424 U.S. 693 (1976); Board of Regents v. Roth, 408 U.S. 564 (1972). Where this liberty interest is implicated, the employee has a due process right to a hearing at which he is afforded the "opportunity to clear his name." Board of Regents v. Roth, supra. For purposes of ascertaining if a name-clearing hearing is required, there "must be some factual dispute between an employer and a discharged employee which has some significant bearing on the employee's reputation." Codd v. Velger, 429 U.S. 624, 627 (1977).

In the instant case, there is no dispute as to the fact that plaintiff's liberty interest was affected by the media publicity following her dismissal

from the defendants' employ. Further, plaintiff has steadfastly denied all charges of insubordination and mishandling of county funds. Nevertheless, defendants move for summary judgment based on the argument that plaintiff, having been afforded the opportunity to clear her name at the January 21 hearing, was not denied her procedural due process rights and, thus, no constitutional violation occurred.

At the outset of its inquiry into the proper procedure mandated by the Due Process Clause, the Court notes that the federal cause of action involved here is for the "breach of the duty that the Fourteenth Amendment imposes on states and their officials not to deprive a person of liberty without due process of law." Cox v. Northern Virginia Transp. Commission, 551 F.2d 555, 558 (4th Cir. 1976).

The federal tort, therefore, is not the defamation. Paul v. Davis, supra.

When a court is presented with a liberty interest claim under § 1983, the primary inquiry is whether plaintiff was afforded an opportunity to refute the stigmatizing charges. This procedural opportunity requires that the employee be given a list of the reasons for his discharge and a hearing where he may respond to the impugning charges which led to his dismissal. Board of Regents v. Roth, supra at 573; Endicott v. Huddleston, 644 F.2d 1208, 1216 (7th Cir. 1980). Upon finding that no opportunity to refute the charges was ever given, it becomes the duty of the district court to order a delayed Roth hearing. White v. Thomas, 660 F.2d 680 (5th Cir. 1981); Rodriguez de Quinonez v. Perez, 596 F.2d 486, 491 (1st Cir. 1979).

Although damages are clearly available under 42 U.S.C. § 1983, Carey v. Piphus, 435 U.S. 247 (1978), courts have indicated that money damages may be awarded to redress liberty interest deprivations in the emplyee-discharge setting only in rare instances. See, e.g., Wilson v. Taylor, 658 F.2d 1021, 1032-33 (5th Cir. 1981) (even though emotional distress caused by the denial of due process is compensable, money damages are unavailable if such injury was the result of plaintiff's justifiable discharge); Endicott v. Huddleston, supra (plaintiff could recover for injury occasioned by three-year passage of time between discharge and Roth hearing).

In response to defendants' motion for summary judgment, plaintiff argues that she was entitled to a pre-termination hearing to refute the charges made against her. For the reasons given below,

the Court finds that plaintiff was accorded a due process hearing with all necessary speed and, therefore, was not denied her due process right to an "opportunity to clear her name."

The premise behind the Supreme Court's decision to require a name-clearing hearing, at which stigmatizing charges can be refuted, is the existence of some defamatory charge. No liberty interest is implicated until such information becomes public. Upon publication of the charges, the opportunity to clear one's name becomes a constitutional right. Until the charges become publicly known, there are no smudges against the employee's name which call for refutation at a name-clearing hearing. This construction gives a meaning to the Supreme Court's carefully chosen wording of affording "an oportunity to clear one's name."

The purpose of such a post-termination hearing is not to allow the employee to argue for reinstatement. Here, plaintiff admits that she has no such property rights in her job. Thus, the purpose of the post-termination hearing is to provide plaintiff the opportunity to refute the charges that led to her dismissal. To require a pre-termination hearing, under these circumstances, would intolerably interfere with the functioning of local governments. A different rule would, in effect, give plaintiff a property interest in her job by preventing her discharge until good cause is shown.

This same rationale for holding that the right to refute defamatory charges does not arise until after the charges become publicly known was recently articulated by the Fifth Circuit when it stated:

> "[T]he remedy mandated by the Due Process Clause of the Fourteenth Amendment is 'an opportunity to refute the [stigmatizing] charge.'" Codd v. Velger, 429 U.S. 624, 627, 97 S.Ct. 624, 626-627, 51 L.Ed.2d 92, 95-96 (1977). If the charges were true, a hearing would not redress the stigmatization, for it would only demonstrate their verity. "No hearing would [in that case] afford a promise" of providing a person about whom derogatory information had been published with "an opportunity to clear his name." Codd v. Velger, 429 U.S. at 627, 97 S.Ct. at 884, 51 L.Ed.2d at 96. The hearing, then, is not a prerequisite to publication and the state is not obliged to tender one. The state need only make known to the stigmatized employee that he may have an opportunity to clear his name upon request. It need not initiate the hearing process of its own accord.

In Re Selcraig, 705 F.2d 789, 796 (5th Cir. 1983)(footnotes omitted). See also Cook v. Town of Davidson, 534 F.Supp. 808, 811 (W.D.N.C. 1982)(plaintiff not entitled to a pre-termination hearing).

In addition to the Court's interpretation as to when a name-clearing hearing must be afforded,[1] the fact that no intentional press releases were issued by

the County is also dispositive on the issue of when a hearing on the charges must be afforded. In fact, the charges were made at a meeting, the minutes of which are required by law to be made available for public inspection. See O.C.G.A. § 50-18-50, et seq. (1982).

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1. Plaintiff cites two cases that are arguably contrary to the Court's conclusion. See Vanelli v. Reynolds School District No. 7, 667 F.2d 773 (9th Cir. 1982), and Rodriguez de Quinonez v. Perez, 596 F.2d 486 (1st Cir. 1979). Both of these courts indicated that the three-factor balancing test of Mathews v. Eldridge, 424 U.S. 319 (1976), must be applied to determine if a pre-termination hearing is constitutionally required. This Court believes that the logic of the Fifth circuit, as outlined in the text, is correct. To the extent that the above-cited cases are inconsistent, the Court disagrees with their holdings. Moreover, the Ninth Circuit case involved a protected property interest and, therefore, a pre-termination hearing was already constitutionally required. Similarly, in the First Circuit case, the Government issued a defamatory press release without a sufficient basis to determine the accuracy of charges of dishonesty. The Court notes that neither of these factors is present in the instant case.

Moreover, upon the occurrence of the ensuing publicity given to the minutes as they related to plaintiff's discharge, a name-clearing hearing was held. The date of the hearing was set within a few days of plaintiff's dismissal. Under these circumstances, the Court concludes that plaintiff was not denied any procedural due process right because of the failure of the defendants to hold a pre-termination name-clearing hearing.

As if anticipating that the Court would accept defendants' contention with respect to the timing of the name-clearing hearing, plaintiff further argues that the January 21 hearing was constitutionally deficient. In this regard, plaintiff contends that (1) the notice of reasons for her discharge were insufficient; (2) no witness list or summary of their expected testimony was furnished to plaintiff prior to the hearing; and (3)

the tribunal that conducted the hearing was prejudiced against her.

As stated previously, the purpose of the notice and hearing in this setting is "to provide the person the opportunity to clear [her] name." Board of Regents v. Roth, supra at 573. While the Constitution requires that there be some form of hearing, the formality and procedural requirements for that hearing are not fixed. Id. at 570-571. In essence, a "due process hearing demands that the person have the right to support his allegations by argument, and if necessary, by proof however informal." Memphis Light, Gas & Water Div. v. Craft, 436 U.S. 1, 15 (1978). "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." Mathews v. Eldridge, 424 U.S. 319, 333 (1976).

With respect to plaintiff's contentions as to the adequacy of the hearing, defendants have submitted to the Court the detailed record of the January 21 hearing. The voluminous record reveals that, in essence, a mini-trial was conducted as to the correctness of the charges forming the basis for the dismissal -- insubordination and the mishandling of county funds. All witnesses were sequestered and the proceeding was governed by established rules of evidence. Further, all witnesses presented by the County to substantiate the grounds for dismissal were tendered to plaintiff's counsel for cross-examination. Finally, all persons with knowledge of the charges were present and examined during the course of the hearing. Given the extent of plaintiff's cross-examination of witnesses and her own personal knowledge of what the charges against her

were, it cannot be said that the hearing was deficient because plaintiff was not given a detailed statement of the charges.

Similarly, plaintiff's contention that she was neither provided with the names of the County's witnesses nor the substance of their testimony is without merit. All of the witnesses were either present Commissioners or persons who had served as Clerks to the Commissioners while plaintiff was employed. As such, they could reasonably have been expected to testify at the hearing. See Glenn v. Newman, 614 F.2d 467, 473 (5th Cir. 1980).

Plaintiff's final contention with respect to the adequacy of the hearing is directed at the partiality of the Commissioners. More specifically, plaintiff complains that the hearing was inadequate because the personal animosity of the two

defendant Commissioners prevented them from disavowing the charges of insubordination and the mishandling of county funds. But this ignores the "name-clearing" purpose of the hearing. If plaintiff's contention was correct, the hearing afforded her the opportunity to expose such animosity. Due process requires no more. Besides, the evidence adduced at the hearing disclosed a rational basis, devoid of animosity, for the termination by the Commission's majority.

In sum, the Court discerns no issue of fact as to whether the plaintiff was offered a fair opportunity to clear her name.

In concluding that plaintiff is not entitled to a trial for damages flowing from any loss of reputation and impairment of employment oportunities, the Court notes that plaintiff is not left without a remedy. The plaintiff is free

to recover damages in a state law action for defamation.

Based on the foregoing analysis, the defendants' motion for summary judgment is hereby GRANTED. The Clerk is directed to enter an appropriate judgment dismissing the action.

SO ORDERED, this 30th day of September, 1983.

s/Anthony A. Alaimo
CHIEF JUDGE, UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 83-8731

D.C. Docket No. CV-583-0001

LATRELLE CAMPBELL,
Plaintiff-Appellant,

versus

PIERCE COUNTY, GEORGIA, by and through the Board of Commissioners of Pierce County, TROY MATTOX, FOY KIMBRELL and LARRY THOMAS,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Georgia

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Before KRAVITCH and JOHNSON, Circuit Judges, and ALLGOOD*, District Judge.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern

District of Georgia, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby, AFFIRMED;

It is further ordered that plaintiff-appellant pay to defendants-appellees, the costs on appeal to be taxed by the Clerk of this Court.

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*Honorable Clarence W. Allgood, U.S. District Judge for the Northern District of Alabama, sitting by designation.

Entered: September 18, 1984
For the Court: Spencer D. Mercer, Clerk

By: s/Miguel J. Cortez, Jr.
Deputy Clerk

ISSUED AS MANDATE: NOV 01, 1984

Filed
October 24, 1984

UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 83-8731

LATRELLE CAMPBELL,

Plaintiff-Appellant

versus

PIERCE COUNTY, GEORGIA, by and through the Board of Commissioners of Pierce County, TROY MATTOX, FOY KIMBRELL and LARRY THOMAS,

Defendants-Appellees

Appeal from the United States District Court for the Southern District of Georgia

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ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

(Opinion September 18, 1984

11 Cir., 1984, _____F.2d____).

(October 24, 1984)

Before KRAVITCH and JOHNSON, Circuit Judges, and ALLGOOD*, District Judge.

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*Honorable Clarence W. Allgood, U.S. District Judge for the Northern District of Alabama, sitting by designation.

PER CURIAM:

The Petition for Rehearing is DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 26), the Suggestion for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

s/Frank M. Johnson, Jr.
United States Circuit Judge

GEORGIA STATUTORY PROVISIONS

Official Code of Georgia Annotated § 50-14-1 provides in pertinent part:

> (a) As used in this chapter, "agency" means any state department, agency, board, bureau, commission, or political subdivision; the governing authority or any department, agency, board, bureau, commission, or political subdivision of any county, municipal corporation, board of education, or other political subdivision; and any state or local housing authority.
>
> (b) Any provision of this or any other law to the contrary notwithstanding, the term "records" or "public records" means those documents and writings which are prepared and kept as written memorials of a final action taken by any agency.
>
> (c) All meetings of any agency at which official actions are to be taken are declared to be public meetings and shall be open to the public at all times. No resolution, rule, regulation, or formal action shall be binding except as taken or made at such meetings....
>
> (d) Representatives of the news media at all times shall be afforded access to meetings declared open to the public pursuant to subsection (c) of this Code section. Visual, sound, and visual and sound recording during open meetings by representatives of

the news media shall be permitted at each public meeting.

(e) The minutes of a meeting of any agency shall be promptly recorded and such records shall be open to public inspection....

Official Code of Georgia Annotated § 50-14-3 provides in pertinent part:

It shall be unlawful for any person who is a member of any agency to conduct any meeting not held in accordance with this chapter.

Official Code of Georgia Annotated § 50-14-4 provides in pertinent part:

This chapter shall not apply to the following...

(6) Meetings when:

(A) Any agency or other unit is discussing the appointment, employment, disciplinary action, or dismissal of a public officer or employee; or

(B) Any agency or other unit is hearing complaints or charges brought against a public officer or employee unless he requests a public meeting.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has this day, prior to filing, served three copies of the foregoing Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit upon each of the persons indicated below, said persons being counsel of record for all respondents, by depositing the same in the United States mail, first-class postage prepaid, addressed to the following:

Wallace E. Harrell, Esq.
Gilbert, Whittle, Harrell,
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This the 15th day of January, 1985.

Eugene Highsmith

EUGENE HIGHSMITH
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